

REMARKS

Claims 1-51 and 61-89 are pending in the Application. No amendments or new claims are being introduced. Applicant believes no new matter is being introduced by way of the following remarks.

Regarding § 103 Rejection

Claims 1-7, 11-16, 18-24, 28-30, 32, 33, 35, 36, 38, 39-41, 43-48, 50, 51, 62, 64, 66, 68, 70, 72, 74-79, and 84-89 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over Primak *et al.* (Pub. No. 2001/0039585), hereinafter “Primak” in view of Aman *et al.* (USPN 5,603,029), hereinafter “Aman.” Applicants respectfully traverse the rejections.

Applicant’s claim 19 recites in pertinent part “providing...[a] candidate server list including at least two server addresses selected based on weights corresponding to [] candidate servers.” Emphasis added.

In stark contrast, a system employing a combination of relevant elements disclosed in Primak and Aman (hereinafter “Primak-Aman”) does not provide a candidate server list of two or more candidates servers in which servers are included in the list based on weights. Applicant agrees Primak does not teach “returning a candidate list of at least two candidate servers...” In Aman, servers are added to a list based on a series of thresholds and not weights as recited in Applicant’s claim 19. *See* Aman, FIG. 6B (Block 635 including server having at least 5% available capacity and block 645 including server having current level greater than target level). After including the servers in the list, weights are then determined for each of these servers based on a number and type of servers in the list. *See* Aman, FIG. 7 (Block 735, set fixed weight for each server if capacity information is unknown for more than half of the servers in a list; else block 750, do not set fixed weights for each server). Because the weight for each server can only be determined after the servers are added to the list, Aman cannot “provid[e]...[a] candidate server list including at least two server addresses selected based on weights corresponding to [] candidate servers,” as recited in Applicant’s claim 19. Therefore, a system according to Primak-Aman would either determine a list of just a single server (Primak) or a list of servers based on thresholds (Aman) to send to a client.

Moreover, Primak-Aman teaches away from Applicant's "providing...[a] candidate server list including at least two server addresses." Contrary to the express teachings of Primak (*see* paragraph [0031] (client connects to a server best suited to handle a connection)), modifying Primak with Aman would result in a client attempting to connect to servers using connections of less than best quality or even marginal quality instead of using only a connection of the best quality. Using marginal quality connections as well would reduce any gains for the client from using only the best quality connection. Also, modifying Primak's determination of a single server as the best server to include other servers based on Aman, as Applicant does, amounts to impermissible hindsight.

For at least the foregoing reasons, Applicant respectfully submits that the rejection of claim 19 under 35 U.S.C. 103 (a) is improper and should be withdrawn.

Independent claims 1, 35, 40, 45, and 47 have similar elements as Claim 19 and should be allowed for similar reasons as presented above.

Claims 2-7, 11-16, 18, 20-24, 28-30, 32, 33, 36, 38, 39, 41, 43-44, 46, 48, 50, 51, 62, 64, 66, 68, 70, 72, 74-79, and 84-89 should be allowed for the same reasons as the independent claims from which they depend.

Claims 17, 34, and 80 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of Aman in view of Meek *et al.* (USPN 6,539,426), hereinafter "Meek."

Because claims 17, 34, and 80 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, Applicant respectfully submits they should be allowed for at least the same reasons.

Claims 8-10, 25-27, 37, 42, 49, 73, and 81-83 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Primak in view of Aman in view of Guenthner *et al.* (USPN 6,134,588), hereinafter "Guenthner."

Because claims 8-10, 25-27, 37, 42, 49, 73, and 81-83 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, which should be allowed under 35 U.S.C. § 103(a) for reasons presented above, Applicant respectfully submits the dependent claims should be allowed for at least the same reasons.

Claims 61, 63, 65, 67, 69, and 71 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Primak in view of Aman in view of Lin (USPN 6,298,451).

Because claims 61, 63, 65, 67, 69, and 71 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, which should be allowed under 35 U.S.C. § 103(a) for reasons presented above, Applicant respectfully submits they should be allowed for at least the same reasons as the base claims from which they depend.

CONCLUSION

In view of the above amendments and remarks, it is believed that all now pending claims (claims 1-51 and 61-89) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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